

BEFORE THE KANSAS STATE BOARD OF NURSING
900 S.W. Jackson, Room 551-S
Topeka, Kansas 66612-1256
913-296-4929

In the Matter)

of)

ANTHONY B. CARR)
_____)

Case No. ⁹⁰⁻²⁸⁷⁻⁷ 91-287-7

INITIAL ORDER

This matter comes on for hearing this 22nd day of August, 1991, before the board's presiding officer, the designated hearing panel. Panel members present are: Dean Zerr, R.N., chairperson; Elsie Flory, L.P.N. Also present are Theresa Marcel Nuckolls, Assistant Attorney General, as general counsel to the hearing panel and Diane M. Glynn, as disciplinary counsel to the petitioner. Respondent appears without counsel.

Respondent is sworn in. The hearing panel informs the respondent that he may (1) contest the facts as set forth in the petition, (2) stipulate to the facts as set forth in the petition or (3) offer no contest to the facts as set forth in the petition. The hearing panel informs the respondent that if he chooses to stipulate or offer no contest to the facts, as set forth in the petition, and if the panel accepts a stipulation or offer of no contest from the respondent, he will be giving up his right to a full adjudicative hearing, and that the panel may then impose whatever disciplinary sanctions it deems appropriate

based upon those facts. The respondent states that he understands the results of his choice, he waives the reading of each fact set forth in the petition and he voluntarily enters no contest to the facts as set forth in the petition in this matter. The hearing panel unanimously votes to accept respondent's entry of no contest to the facts.

Respondent does not offer objection to the form or filing of the petition nor to the panel's jurisdiction in this matter.

Respondent's exhibits no. 1, 2 and 3 are admitted without objection from the petitioner. In sworn testimony respondent states that his "dry date" (last use of narcotics or alcohol) was August 20, 1990 and that he continues to regularly participate in recovery programs.

Mary Truhe, KSNA peer assistance program director is sworn in and testifies that: following respondent's original appearance before this panel on July 19, 1991, respondent entered the peer assistance program on August 8, 1991; that a urine screen on respondent was negative; and that respondent has been fully cooperative.

Whereupon due consideration of the evidence testimony and record in this matter, and upon a unanimous vote, the hearing panel hereby makes and enters the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Respondent has a Kansas license to practice as a licensed practical nurse in the state of Kansas, having been issued License No. 24-02667-061, having an expiration date of June, 1993.

2. Respondent has applied to the board for a license as a registered nurse and has received a passing score on the N-Clex examination.

3. K.S.A. 1990 Supp. 65-1120 authorizes the board to take certain actions on a license or application for licensure.

4. Respondent was served a copy of the petition in this matter by depositing a copy of the same in the United States Mail, first class postage prepaid, on July 2, 1991, addressed to respondent at 9238 Newton, #2B, Overland Park, Kansas 66212.

5. Respondent was served a copy of the Notice of Continuance and Notice of Hearing for today's hearing on this matter by depositing a copy of the same in the United States Mail, first class postage prepaid on July 25, 1991, addressed to respondent at 9238 Newton, #2B, Overland Park, Kansas 66212.

6. On or about June 20, 1990, in compliance with his employer's request, respondent underwent treatment for chemical dependency at St. Mary's Hospital in St. Louis, Missouri.

7. Prior to treatment, as set forth above, respondent tested positive for illegal street drugs and respondent's employer requested treatment in lieu of termination.

8. On or about May 30, 1991, while engaged in a licensed profession in the state of Kansas, and while in the employ of Regency Health Care Center, Desoto, Kansas, the respondent engaged in abusive language directed at and spit upon a resident.

9. Respondent, in sworn testimony, states that his actions against the resident followed the respondent's attempt to protect a female aide from anticipated assault by the resident (a mental patient) and that the resident then kicked the respondent very hard in the area of respondent's genitals. Respondent states he would handle the situation differently now and apologizes.

10. Respondent, in sworn testimony, states that he has had an alcohol and drug problem but that he is now in recovery.

CONCLUSIONS OF LAW

1. This hearing panel has jurisdiction over this matter and respondent's license and application for licensure pursuant to K.S.A. 65-1110 et seq., K.S.A. 1990 Supp. 65-1120 and K.S.A. 77-501 et seq.

2. K.S.A. 1990 Supp. 65-1120(a)(4) authorizes the hearing panel to take action on a license or an application for

licensure if a respondent is found to be habitually intemperate in the use of alcohol or addicted to the use of habit-forming drugs.

3. K.S.A. 1990 Supp. 65-1120(a)(6) permits the hearing panel to take action on a license or an application for licensure for acts of unprofessional conduct as defined by K.A.R. 60-3-110(a)(5).

4. Respondent has been habitually intemperate in the use of alcohol and has been addicted to the use of habit-forming drugs and he has therefore violated K.S.A. 1990 Supp. 65-1120(a)(4).

5. Respondent has committed acts of unprofessional conduct, as defined by K.A.R. 60-3-110(a)(5).

WHEREUPON, a motion duly made and unanimously voted upon, the hearing panel finds respondent in violation of the Kansas Nurse Practice Act as set forth in Counts I and II of the petition in this matter.

THEREFORE, upon a motion duly made and unanimously voted upon, the hearing panel does hereby order and decree the following:

(1) Respondent's license to practice as a licensed practical nurse is suspended for two (2) years;

(2) Respondent's application for licensure to practice as a registered nurse is granted and then suspended for two (2) years;

(3) Suspension of respondent's licenses to practice as a L.P.N. and as an R.N. is stayed conditional upon the following:

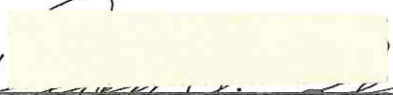
(a) Respondent must successfully complete the two year contract with the Peer Assistance Program;

(b) Respondent must continue to participate in Alcoholics Anonymous, or a similar program, for two years;

(c) Respondent must request and provide to the board quarterly reports from Respondent's current or any future health-care employer and such reports shall relate to respondent's performance of nursing duties and standard of care;

(d) Respondent shall promptly notify the board of his personal and his employer's, addresses or phone numbers and any changes in same.

IT IS SO ORDERED this 7th day of September, 1991.



For the Presiding Officer

Notice Regarding Relief From This Order

This is an Initial Order. The party against whom this initial order was issued may file a petition for review with the agency head within fifteen (15) days after service of this order. This petition for review must state its basis. Unless a later date is stated in an initial order, a stay is granted, or the order is reviewed, an initial order shall become a final order without further notice or proceedings thirty (30) days after the date of service, as indicated by the attached Certificate of Service.


CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing INITIAL ORDER was served by depositing a copy of the same in the United States Mail, first class postage prepaid, this 13th day of September, 1991, to:

Anthony B. Carr
9238 Newton, #2B
Overland Park, Kansas 66212

and by hand-delivering a copy to:

Carol R. Bonebrake
Assistant Attorney General
Disciplinary Counsel for Petitioner
Kansas Judicial Center, 2nd Floor
Topeka, Kansas 66612


Theresa Marcel Nuckolls, #13117